

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8345 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BIPINCHANDRA VADILAL PANCHAL

Versus

BMC

Appearance:

MR BHARAT T RAO for Petitioners
MR PRANAV G DESAI for Respondent No. 1
MR. S.P. DAVE, AGP, for Respondent No. 2
MS KJ BRAHMBHATT for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/04/99

ORAL JUDGEMENT

The petitioners claim to be the tenant of respondent No. 4 since 1969. The claim that they are running their respective business in cabins on the land since 1969 and they have licence under Bombay Shops and Establishment Act, 1948. They also obtained electric

connection and are being charged therefor. According to the petitioners pursuant to the implementation of Town Planning Scheme the petitioners have been removed forcibly and the cabins are demolished and therefore they have approached this court with following reliefs:-

- "(a) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, directions, and/or order directing the Corporation to restore the cabins of the petitioner which is situated in Survey No. 122/2 on Harni Road, which is owned by the respondent No. 4 forthwith.
- (b) Your Lordships be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, directions or orders, declaring that action of the respondent corporation removing the petitioners' cabin situated in the private land of respondent No. 4 without issuing any notice under the provisions of the BPMC Act or under the provisions of the Gujarat Town Planning Act against the law laid down by the Hon'ble Supreme Court in the case of Jashwantsingh.
- (c) Your Lordships be pleased to direct the respondent Corporation to provide alternative accommodation to the petitioners in view of the Corporation consistent practice as followed in 1980, 1988, 1990 and 1992.
- (d) Pending admission, hearing and final disposal of this petition, your Lordships be pleased to restrain the respondent Nos. 1 and 2 not to harass the petitioners from carrying on their business has been removed by the Corporation utter disregards to the provisions of law."

Mr. Rao, learned counsel for the petitioner has taken this court through the entire record of this petition. He has urged that the petitioners are rendered vocationless because of the forcible removal in spite of the fact that the petitioners were protected by virtue of an order of the court of Civil Judge, Baroda in Regular Civil Suit No.1654 of 1988 which is still pending. He has also urged that no notice was served on the petitioners as required under law and therefore the entire Town Planning Scheme would stand vitiated as laid

down by the Supreme Court in the case of JASHVANTSINH VS. AHMEDABAD MUNICIPAL CORPORATION reported in AIR 1991 SC 2130. The petitioners have sought indulgence of this court by way of this petition for a direction on the respondent Corporation for providing alternative accommodations. Mr. Rao has drawn attention of this court to an order passed by this court in an earlier petition Special Civil Application No. 9437 of 1996 on 17.7.1997 which was preferred by this very petitioners wherein the petitioners were directed to make a representation to the Corporation to pass an appropriate order after considering the representation for alternative accommodation. Mr. Rao therefore urged that the disputes raised by the petitioners calls for consideration and the petition may be admitted.

Mr. Desai, learned counsel appearing for respondent Corporation, submitted that admittedly the petitioners are tenants of a private land owner. Admittedly, a Civil Suit has been pending before the Civil Judge, Baroda, seeking the same reliefs except that in the petition a relief of alternative accommodation is sought. Mr. Desai also urged that there is nothing to indicate that when the draft scheme of the Town Planning was introduced and when it was finalised. The petitioners were in occupation of the premises. Further no action is taken by the petitioners against the so-called demolition of cabins against direction of the court. Under the circumstances Mr. Desai urged that the petition cannot be entertained when the petitioners have already chosen a forum.

Ms. Brahmbhatt appearing for respondent No. 4 submits that no relief is sought against respondent No. 4 and has nothing to say. Mr. Dave, AGP, appearing for respondent No. 3 State also states that no relief is sought against the State and therefore also the petition would not lie against the State. Ms. Brahmbhatt also joins Mr. Desai in the arguments that because the suit is pending, this petition would not lie.

Considering the rival contention it is amply clear that there is nothing on record to show that the petitioners were in possession when the draft Town Planning Scheme was introduced and finalised. Further admittedly they are tenants of private land owner. Admittedly the suit is pending before the Civil Judge, Baroda, seeking injunction against removal or demolition of the cabins. The petitioners have therefore chosen a forum earlier and now therefore they cannot approach this court with this petition. As regards the argument of Mr.

Rao that the petitioners also seek indulgence of this court for alternative accommodation, it may be noted that admittedly in an earlier petition by the same petitioners being SCA No. 9437 of 1996, this court has granted the same relief and pursuant thereto the Corporation has issued notice to the petitioners as can be seen from Annexure-F. Under the circumstances the relief sought for by the petitioners in that regard also cannot be said to be a relief which can be granted again, even after due consideration. In the circumstances, in view of this court, the petition does not call for admission. The petition is therefore dismissed. Notice is discharged.

No costs.

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